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I certify under penalty of perjury under the laws of the State of Washington that I delivered/mailed a copy of this document to counsel of record on the 22nd day of August, 1989.
Signed: J. Alfieri

Honorable Walter T. McGovern

Lawrence E. Hard
Victoria J. Bjorkman
LeSourd & Patten, P.S.
2400 Columbia Center
Seattle, WA 98104-7005
(206) 624-1040

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE UNITED STATES OF AMERICA and THE PEOPLE OF THE STATE OF WASHINGTON, Plaintiffs, and THE STANDARD EQUIPMENT COMPANY, INC., Plaintiff in Intervention v. THE WESTERN PROCESSING COMPANY, INC.; et al. Defendants.	NO. C83-252M ANSWER OF UNION OIL COMPANY OF CALIFORNIA TO THIRD AMENDED THIRD-PARTY COMPLAINT AND CROSS-CLAIM BY AMERICAN TAR, PLAINTIFFS THIRD-PARTY; COUNTERCLAIMS OF UNION OIL COMPANY OF CALIFORNIA AGAINST PLAINTIFFS AND AMERICAN TAR THIRD-PARTY PLAINTIFFS; COUNTERCLAIMS AND CROSS-CLAIMS OF UNION OIL COMPANY OF CALIFORNIA JURY DEMAND
THE BOEING COMPANY, Third-Party Plaintiff, v. A & A ANDERSON TANK SERVICE, LTD.; et al., Third-Party Defendants.	

LeSourd & Patten, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

THE BOEING COMPANY,

Cross-Claimant,

v.

RSR CORPORATION, et al.,

Cross-Claim Defendants.

AMERICAN TAR COMPANY, et al.,

Third-Party Plaintiffs,

v.

A & A ANDERSON TANK SERVICE, LTD.; et al.,

Third-Party Defendants.

AMERICAN TAR COMPANY, et al.,

Cross-Claimants,

v.

RSR CORPORATION, et al.,

Cross-Claim Defendants.

ANSWER

Cross-Claim Defendant Union Oil Company of California ("Unocal"), by and through its attorneys, LeSourd & Patten, P.S., Lawrence E. Hard and Victoria J. Bjorkman, and by way of answer to the Third Amended Third-Party Complaint and Cross-Claim of American Tar, et al., hereby alleges as follows:

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

1. Paragraphs 1, 2, and 3 contain allegations of fact to which no answer is required.

2. Cross-Claim Defendant admits that certain defendants, including Third-Party Plaintiffs and Unocal, entered a partial settlement with Plaintiffs embodied in the Phase I Consent Decree, which was filed in this Court on August 27, 1984. Cross-Claim Defendant also admits that the partial settlement related to surface cleanup of the Western Processing site (as that term is used in the Second Amended and Supplemental Complaint). Although Cross-Claim Defendant acted in good faith, Cross-Claim Defendant is without sufficient information to form a belief as to the good faith of other parties.

3. Paragraphs 5, 6, and 7 contain allegations of fact to which no answer is required.

4. Cross-Claim Defendant admits that certain defendants, including Third-Party Plaintiffs, but not including Unocal, entered the settlement with Plaintiffs embodied in the Phase II Consent Decree, which was filed in this Court on April 10, 1987. Cross-Claim Defendant also admits that this settlement related to subsurface cleanup of the Western Processing site (as that term is used in the Third Amended and Supplemental Complaint). Although Cross-Claim Defendant acted in good faith in declining to join this settlement, Cross-Claim Defendant is without information sufficient to form a belief as to the good faith of any party to this settlement. Cross-Claim Defendant denies that any cleanup pursuant

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

to the Phase II Consent Decree was prompt, cost effective, or technically sound.

5. Cross-Claim Defendant admits that this Court has jurisdiction of the subject matter of the Third-Party Plaintiffs' cross-claims and that this Court has pendent jurisdiction over claims made pursuant to Washington law. Cross-Claim Defendant also admits that venue is proper in the Western District of Washington. Cross-Claim Defendant admits that this Court has personal jurisdiction over Unocal and need not answer whether this Court has personal jurisdiction over other parties.

6. Cross-Claim Defendant does not deny the description of Third-Party Plaintiffs American Tar Company, Atlantic Richfield Company, Bethlehem Steel Corporation, Chevron U.S.A., Inc., Flecto Coatings, Ltd., John Fluke Mfg. Co., Inc., Pacific Propeller, Inc., Morton Thiokol, Inc., Safety Kleen, Inc., Seattle Times, Inc., The Pittsburgh & Midway Coal Mining Company, and Western Pneumatic Tube Company, in Paragraph 10.

7. Paragraphs 11 through 83, and Paragraphs 85 through 88, contain allegations regarding defendants other than Unocal. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of any of these allegations and therefore denies the same.

8. Cross-Claim Defendant denies the allegations in Paragraph 84, which relate to Unocal.

9. Cross-Claim Defendant admits that Unocal generated two types of waste: (1) oxazolidone, a waste by-product produced in the

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

sulfinol process, and (2) tank cleaning materials (mostly sludge with water), both of which came to be located at the Western Processing site. Cross-Claim Defendant denies that Unocal engaged in the transportation of those substances to the Western Processing site. Cross-Claim Defendant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 89 and therefore denies these allegations.

10. Cross-Claim Defendant is without sufficient information to form a belief as to the truth of allegations in Paragraph 90 and therefore denies these allegations.

11. By way of answer to Paragraph 91, Cross-Claim Defendant states on information and belief that the Western Processing site constitutes one or more facilities, as the term "facility" is defined in 42 U.S.C. § 9601(9). Cross-Claim Defendant states on information and belief that it is a "person" as that term is defined in 42 U.S.C. § 9601(21). Cross-Claim Defendant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 91 and therefore denies these allegations.

12. Cross-Claim Defendant admits that Unocal was aware of certain settlement negotiations that may have led to the Phase II Consent Decree and that Unocal declined to join in the Phase II Consent Decree under the terms presented by The Boeing Company. Cross-Claim Defendant is without sufficient information to form a belief as to allegations concerning costs incurred by Third-Party Plaintiffs pursuant to the Phase II Consent Decree or any other

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

allegations in Paragraph 92 and therefore Cross-Claim Defendant denies these allegations.

13. Paragraph 93 does not contain allegations of fact to which an answer is required.

14. Cross-Claim Defendant denies that Unocal is or may be liable to Third-Party Plaintiffs for all or part of the costs incurred or to be incurred pursuant to the Phase II Consent Decree and other costs incurred or to be incurred in response to the release of hazardous substances at the Western Processing site. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of any other allegations in Paragraph 94 and therefore denies these allegations as well.

15. Cross-Claim Defendant admits that Unocal participated in the settlement negotiations that led to the Phase I Consent Decree and that Unocal joined in the Phase I Consent Decree. Cross-Claim Defendant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 95.

16. Paragraph 96 does not contain allegations of fact to which an answer is required.

17. Paragraph 97 does not require an answer from Cross-Claim Defendant because it does not contain any allegations of fact relating to Unocal. In any event, Cross-Claim Defendant is without sufficient information to form a belief as to the truth of any of these allegations.

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
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FIRST CLAIM FOR RELIEF

Phase II Cost Recovery Under CERCLA

18. By way of answer to Paragraph 98, Cross-Claim Defendant realleges and incorporates herein by reference its answer to Paragraphs 1 through 97.

19. Paragraph 99 does not contain allegations of fact to which an answer is required.

20. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 100 and therefore denies these allegations.

21. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 101 and therefore denies these allegations.

22. Cross-Claim Defendant denies that any costs incurred by Third-Party Plaintiffs pursuant to the Phase II Consent Decree have been consistent with or not inconsistent with the National Contingency Plan, as alleged in Paragraph 102.

23. Cross-Claim Defendant denies that Third-Party Plaintiffs have satisfied all preconditions to recovery of response costs from Unocal, as alleged in Paragraph 103.

24. Cross-Claim Defendant denies that Unocal is liable to Third-Party Plaintiffs for response costs or interest thereon, as alleged in Paragraph 104.

SECOND CLAIM FOR RELIEF

Phase I Cost Recovery Under CERCLA

25. As Third-Party Plaintiffs do not assert the Second Claim

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

for Relief against Cross-Claim Defendant, the allegations of Paragraphs 105 through 111 do not require an answer by Cross-Claim Defendant. In any event, Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of these allegations and therefore denies these allegations.

THIRD CLAIM FOR RELIEF

Phase II Contribution Under CERCLA

26. By way of answer to Paragraph 112, Cross-Claim Defendant realleges and incorporates herein its answer to the allegations of Paragraphs 1 through 111.

27. Paragraph 113 does not contain allegations of fact to which an answer is required.

28. Cross-Claim Defendant admits that Third-Party Plaintiffs entered into a settlement with Plaintiffs embodied in the Phase II Consent Decree but denies that any cleanup thereunder has been prompt, cost effective, or technically sound, as alleged in Paragraph 114.

29. Cross-Claim Defendant denies the allegations of Paragraph 115, particularly the allegation that Third-Party Plaintiffs have borne more than their fair share of the costs of cleanup.

30. Cross-Claim Defendant denies the allegations of Paragraph 116, particularly the allegation that Third-Party Plaintiffs have discharged a common liability or obligation of defendants including Unocal.

31. Cross-Claim Defendant denies that Unocal is a liable or potentially liable party under CERCLA, as alleged in Paragraph 117.

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
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32. Cross-Claim Defendant denies that Unocal is liable to Third-Party Plaintiffs for contribution, as alleged in Paragraph 118.

FOURTH CLAIM FOR RELIEF

Phase I Contribution Under CERCLA

33. As Third-Party Plaintiffs do not assert the Fourth Claim for Relief against Cross-Claim Defendant, Paragraphs 119 through 125 do not require an answer by Cross-Claim Defendant. In any event, Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of the allegations in Paragraphs 119 through 125 and therefore denies these allegations.

FIFTH CLAIM FOR RELIEF

Phase II Cost Recovery Under Washington Law

34. By way of answer to Paragraph 126, Cross-Claim Defendant realleges and incorporates herein by reference its answer to Paragraphs 1 through 125.

35. Paragraph 127 does not contain allegations of fact to which an answer is required.

36. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of allegations in Paragraph 128 and therefore denies these allegations.

37. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of allegations in Paragraph 129 and therefore denies these allegations.

38. Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of allegations in Paragraph 130 and therefore denies these allegations.

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

39. Cross-Claim Defendant denies that Third-Party Plaintiffs have satisfied any and all preconditions to recovery of remedial action costs from Unocal, as alleged in Paragraph 131.

40. Cross-Claim Defendant denies that Unocal is liable to Third-Party Plaintiffs for Phase II remedial action costs or interest thereon under RCW 70.105B.040(2) or RCW 70.105C.040(2), as alleged in Paragraph 132.

SIXTH CLAIM FOR RELIEF

Phase I Cost Recovery Under Washington Law

41. As Third-Party Plaintiffs do not assert the Sixth Claim for Relief against Cross-Claim Defendant, Paragraphs 133 through 139 do not require an answer by Cross-Claim Defendant. In any event, Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of these allegations and therefore denies these allegations.

SEVENTH CLAIM FOR RELIEF

Phase II Contribution Under Washington Law

42. By way of answer to Paragraph 140, Cross-Claim Defendant realleges and incorporates herein by reference its answer to Paragraphs 1 through 139.

43. Paragraph 141 does not contain allegations of fact to which an answer is required.

44. Cross-Claim Defendant admits that Third-Party Plaintiffs have entered into a settlement with Plaintiffs embodied in the Phase II Consent Decree but denies that any cleanup thereunder has been

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

prompt, cost-effective or technically sound. Cross-Claim Defendant also denies that the settlement discharged a common liability or obligation of defendants and denies all of the allegations of Paragraph 142.

45. Cross-Claim Defendant denies that Unocal is jointly and severally liable under RCW 70.105B.040 or RCW 70.105C.040 for costs of cleanup borne or to be borne by Third-Party Plaintiffs under the Phase II Consent Decree, as alleged in Paragraph 143.

46. Cross-Claim Defendant denies that Unocal is liable to Third-Party Plaintiffs for contribution under RCW 4.22.040, as alleged in Paragraph 144.

EIGHTH CLAIM FOR RELIEF

Phase I Contribution Under Washington Law

47. As Third-Party Plaintiffs do not assert the Eighth Claim for Relief against Cross-Claim Defendant, Paragraphs 145 through 149 do not require an answer by Cross-Claim Defendant. In any event, Cross-Claim Defendant lacks sufficient information to form a belief as to the truth of the other allegations of Paragraphs 145 through 149 and therefore denies these allegations.

NINTH CLAIM FOR RELIEF

Declaratory Relief

48. By way of answer to Paragraph 150, Cross-Claim Defendant realleges and incorporates herein by reference its answer to Paragraphs 1 through 149.

49. Paragraph 151 does not contain allegations of fact to which an answer is required.

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

50. Cross-Claim Defendant denies that Third-Party Plaintiffs are entitled to entry of a declaratory judgment declaring Unocal liable for response costs or damages to be incurred by Third-Party Plaintiffs. Cross-Claim Defendant admits that this Court has jurisdiction to award declaratory relief but denies all other allegations in Paragraph 152.

51. Cross-Claim Defendant is without sufficient information to form a belief as to the truth of allegations in Paragraph 153 and therefore denies these allegations.

52. Paragraph 154 does not contain allegations of fact to which an answer is required.

53. Paragraph 155 does not contain allegations of fact to which an answer is required.

By way of further answer to the Third Amended Third-Party Complaint and Cross-Claim, Cross-Claim Defendant Unocal asserts Affirmative Defenses as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

54. Third-Party Plaintiffs' Third Amended Third-Party Complaint and Cross-Claim fails to state a claim against Unocal upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Detrimental Reliance)

55. The United States and the State of Washington were responsible for the regulation, monitoring, control, and safety of

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

the activities at the Western Processing site. They represented that the site was lawfully and safely operated and permitted, and suitable for the disposal of hazardous waste, including waste sent by Unocal. They intended that defendant generators and transporters rely on their representations and advice. Insofar as Unocal may have relied on such representation or advise, Unocal is not liable to Third-Party Plaintiffs for contribution or otherwise.

THIRD AFFIRMATIVE DEFENSE

(42 U.S.C. § 9607(b)(3))

56. Cross-Claim Defendant Unocal is not liable to Third-Party Plaintiffs because: (a) any release or threat of release of a hazardous substance and any damages resulting therefrom were caused solely by the acts of third parties whose acts and omissions did not occur in connection with a contractual relationship with Unocal; and (b) Unocal exercised due care and took precautions against the foreseeable acts and omissions of such third parties, in accordance with 42 U.S.C. § 9607(b)(3).

FOURTH AFFIRMATIVE DEFENSE

(Acts or Omissions of Third Persons)

57. Third-Party Plaintiffs' claims for damages are barred because any such damages are the result of actions or omissions of Third-Party Plaintiffs or other persons over whom Cross-Claim Defendant had no control. Unocal is not liable for any acts or omissions of Third-Party Plaintiffs and their agents. Furthermore, Unocal had no access or means or right of control over such persons

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

or the Western Processing site, and at all times acted with due care and as a reasonably prudent person would under the circumstances.

FIFTH AFFIRMATIVE DEFENSE

(Intervening Cause)

58. Cross-Claim Defendant Unocal is not liable for any damages or costs of response incurred by Third-Party Plaintiffs because such damages or costs, if any are found to exist, were caused by independent intervening acts of third persons.

SIXTH AFFIRMATIVE DEFENSE

(Contributory Negligence and Negligence Per Se)

59. Third-Party Plaintiffs' claims against Unocal are barred by the doctrines of contributory negligence and/or negligence per se or, in the alternative, any damages must be reduced proportionately by the amount of harm or damage caused by comparative negligence attributable to Third-Party Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

(No Cause in Fact or Proximate Cause)

60. Third-Party Plaintiffs' claims are barred because Unocal's substances were neither the cause-in-fact nor the proximate cause of any damages incurred and that Unocal acted with due care and non-negligently in full compliance with all applicable laws, rules, and regulations governing the generation, transportation, and disposal of hazardous waste.

EIGHTH AFFIRMATIVE DEFENSE

(No Hazardous Substances at Site)

61. Any hazardous substance Unocal delivered to the Western

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

Processing site no longer exists at the site because it was transported, resold, recycled, incinerated, or removed.

NINTH AFFIRMATIVE DEFENSE

(Apportionment)

62. If it is determined that Unocal is liable as a generator of a portion of the waste stored at the Western Processing site, Unocal's liability, if any, should be apportioned in direct relation to the quantity, quality and period of storage and removal of its waste, as compared with the quantity, quality and period of storage and removal of all the wastes at the facility. Such liability, if any, should also be apportioned according to the acts and omissions of any state or federal government or agency, which had any duty and obligation to regulate and control the site's operation.

TENTH AFFIRMATIVE DEFENSE

(Divisible Harm)

63. Cross-Claim Defendant Unocal does not share in any common liability with other Defendants or Third-Party Plaintiffs because the substance which Unocal delivered to the Western Processing site, and any releases therefrom, should such releases be found to exist, are divisible from wastes of other Defendants or Third-Party Plaintiffs, thus precluding the imposition of joint and several liability. Therefore, Unocal is not liable to Third-Party Plaintiffs for any form of contribution or otherwise.

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

ELEVENTH AFFIRMATIVE DEFENSE

(Response Inconsistent With NCP)

64. Third-Party Plaintiffs' claim against Unocal for cost recovery under 42 U.S.C. § 9607 are barred because response measures taken by Third-Party Plaintiffs are inconsistent with, and were not approved under, the National Contingency Plan.

TWELFTH AFFIRMATIVE DEFENSE

(Costs Not Necessary)

65. Part or all of the costs incurred by Third-Party Plaintiffs are not necessary costs of response within the meaning of 42 U.S.C. § 9607(a)(4)(B). Therefore, Third-Party Plaintiffs' claims against Unocal under 42 U.S.C. § 9607 must be reduced or barred.

THIRTEENTH AFFIRMATIVE DEFNESE

(RCW 70.105B Superceded)

66. Third-Party Plaintiffs' claims against Unocal under RCW 70.105B are barred because this chapter has been superceded by RCW 70.105C.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Section for Damages Under RCW 70.105C)

67. Third-Party Plaintiffs' claims for damages against Unocal under RCW 70.105C are barred because this Chapter does not provide a private right of action for damages.

FIFTEENTH AFFIRMATIVE DEFENSE

(Equitable Factors)

68. Third-Party Plaintiffs are not entitled to contribution

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

under 42 U.S.C. § 9613(f)(1) due to equitable factors, including, but not limited to, the following:

a. In 1970, if not before, Third-Party Plaintiff Boeing knew that Western Processing did not dispose of Third-Party Plaintiff Boeing's wastes in a lawful and environmentally sound manner.

b. Third-Party Plaintiff Boeing's wastes comprised 63% and possibly as much as 80% of all wastes shipped to Western Processing.

c. As the dominant customer of Western Processing's waste disposal services, Third-Party Plaintiff Boeing effectively controlled the operations at the Western Processing site and, for purposes of CERCLA, was an owner/operator of Western Processing.

d. Third-Party Plaintiff Boeing's wastes were among the most hazardous wastes shipped to Western Processing.

e. Third-Party Plaintiff Boeing knowingly shipped wastes to Western Processing that were not reclaimable.

f. Third-Party Plaintiff Boeing refused to pay Western Processing enough for disposal of wastes to enable Western Processing to improve its operation.

g. In the course of this litigation, Third-Party Plaintiff Boeing intentionally or negligently misrepresented the volume of wastes Third-Party Plaintiff Boeing had shipped to Western Processing.

h. By misrepresenting the volume of its wastes, Third-Party Plaintiff Boeing breached its fiduciary duty to other defendants as the head of the Coordinating Committee.

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

i. Under the Phase I Consent Decree, Third-Party Plaintiff Boeing has paid less than its fair share of liability for surface cleanup on the basis of volume and composition of waste.

j. Under the Phase II Consent Decree, Third-Party Plaintiff Boeing has paid less than its fair share of liability for subsurface cleanup on the basis of volume and composition of waste.

k. But for the actions of Third-Party Plaintiff Boeing, Unocal would have been a party to a Consent Decree covering subsurface cleanup and would have avoided substantial litigation expenses.

l. As a site operator, the United States was directly responsible for discharge of hazardous substances into the soil and water at the Western Processing site.

m. Even after the United States knew that Western Processing operations were not in compliance with environmental laws and were causing pollution, the United States continued to advise generators and transporters to send hazardous waste to the site.

n. Even after the United States knew that the Western Processing operations were not in compliance with environmental laws and were causing pollution, the United States, through the Army, Navy and Air Force, continued to ship large quantitities of hazardous waste to the site.

o. The United States, through EPA, negligently allowed Western Processing to continue operations until April 9, 1983, and thereby increased the level of contamination at the site.

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701 FIFTH AVENUE
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(206) 624-1040

p. The United States negligently conducted the preliminary sampling and cleanup at the site and thereby increased the level of contamination at the site.

q. The United States allowed the Boeing Company--which generated more of the waste shipped to Western Processing than all other generators combined--to settle its liability on the basis of volume figures that the United States knew were understated by more than seven million gallons.

r. But for the actions of the United States, Unocal would have been a party to a Consent Decree covering the subsurface cleanup and would have avoided substantial litigation expenses.

s. As a site operator, the State of Washington was directly responsible for discharge of hazardous substances into the soil and water at the Western Processing site;

t. Even after the State of Washington knew that the Western Processing operations were not in compliance with environmental laws and were causing pollution, the State of Washington continued to advise generators and transporters to send hazardous waste to the site.

u. The State of Washington, through the Washington Department of Ecology and the Washington State Pollution Control Commission, negligently allowed Western Processing to continue operations until April 9, 1983, and thereby increase the level of contamination of the site;

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

v. The State of Washington negligently conducted the preliminary cleanup and sampling at the site and thereby increased the level of contamination of the site.

SIXTEENTH AFFIRMATIVE DEFENSES

(Equitable Shares)

69. Third-Party Plaintiffs are not entitled to contribution from Unocal under RCW 4.22 because Third-Party Plaintiffs may not have paid their equitable shares of costs under the Phase II Consent Decree.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Future Response Costs and Declaratory Relief Barred)

70. To the extent that Third-Party Plaintiffs' complaint seeks a declaratory judgment for future response costs, recovery of those costs is premature and is thus barred. CERCLA does not provide for recovery of future costs by a private party. It cannot now be determined whether future costs are consistent with the National Contingency Plan, and are necessary costs of response.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Set-Off)

71. Unocal is entitled to set-off against the Third-Party Plaintiffs' costs and damages (a) all costs incurred and damages caused by the Third-Party Plaintiffs' negligent actions; and (b) all costs for which compensation has already been received or which has been agreed to be paid by other parties.

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
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(206) 624-1040

NINETEENTH AFFIRMATIVE DEFENSE

(Statute of Limitation and Laches)

72. Third-Party Plaintiffs' claims are barred by the doctrine of laches and the applicable statutes of limitation, including, but not limited to, 42 U.S.C. § 9613 and RCW 4.16.130.

COUNTERCLAIMS AND CROSS-CLAIMS

By way of further answer and in support of its counterclaims against the United States, the State of Washington, The Boeing Company, and Third-Party Plaintiffs, Unocal states as follows:

73. The Boeing Company is a corporation incorporated under the laws of the State of Delaware with its principal place of business located in Seattle, Washington. Boeing is doing business in the State of Washington. This Court has personal jurisdiction over Boeing pursuant to RCW 4.28.185 and other applicable authority.

74. Prior to 1951, the area now known as the Western Processing site (as that term is used in the Third Amended and Supplemental Complaint) was agricultural land without manmade improvements.

75. From 1951 through 1960, the United States Army leased the Western Processing site and operated thereon an anti-aircraft artillery installation. The Washington National Guard also operated the site during this period.

76. On information and belief, the Army and the National Guard stored and used a number of hazardous substances at the Western

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

Processing site. Insofar as the Army used these substances to clean or otherwise treat vehicles and heavy equipment, discharge or deposit of these substances into the soil or water are likely to have occurred.

77. On information and belief, the Army and the National Guard used trichloroethylene (TCE) to clean vehicles and artillery at the Western Processing site. TCE is a hazardous substance under 40 CFR § 261.31.

78. On information and belief, other substances used, stored, or disposed of by the Army and National Guard at the Western Processing site include: polychlorinated biphenyls (PCBs); lubricating oils and greases; dry-cleaning solvent; ammonia; ammonium carbonate; ammonium persulphate; carbon tetrachloride; trisodium phosphate; caustic soda (sodium hydroxide); rifle bore cleaner; lewisite; arsenic; acetone; benzene; and various paints, enamels, thinners, varnishes, and removers. Some, or all, of these substances, including the TCE referred to in Paragraph 77, were found at the Western Processing site, and constitute hazardous substances for purposes of CERCLA.

79. Features of the United States anti-aircraft artillery installation on the Western Processing site included the following: a tiled subsurface drainfield on the western margin of the site; drain lines from on-site facilities to a septic tank just northeast of the drainfield; a 500-gallon chlorination pit (tank) just south

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

of the drainfield; and a sewer line between the chlorination pit and Mill Creek. In addition, there were tanks for gas and oil and two ammunition areas.

80. The Army terminated its lease in 1960 and paid the lessor a cash settlement in lieu of returning the property to its previous condition. The Army left a variety of storage tanks and sewerage and drainage facilities on the Western Processing property after termination of the lease. The Army made no attempt to eliminate any hazardous waste contamination.

81. In the early 1960's, the Western Processing Company acquired the Western Processing site and began operating the site as a chemical reclaiming and recycling business. Over approximately twenty years of operation, the Western Processing Company accepted millions of gallons of liquid waste and thousands of tons of solid waste. Most of the hazardous waste came from The Boeing Company, and much of the hazardous waste from The Boeing Company was not reclaimable or recyclable. In most instances, hazardous waste from The Boeing Company was simply dumped at the site and not treated.

82. During the 1970's, if not before, the United States and the State of Washington became aware that the operations of the Western Processing Company at the site were causing pollution to surface waters and were not in compliance with applicable federal and state statutes and regulations. Despite this knowledge, the United States, through EPA, allowed Western Processing to continue its

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operations. Moreover, employees of the United States and the State of Washington repeatedly advised and directed generators and transporters of wastes, including hazardous substances, to take their wastes to the Western Processing site.

83. At least as early as 1979, EPA sent an inspector to the Western Processing site to investigate noncompliance with environmental laws. At this time, if not earlier, EPA became acutely aware of conditions at the site. The inspector reported "leaking containers and drums" and "standing liquid in impoundments improperly dyked." Moreover, the inspector observed "runoff" and explained that "any surface runoff directly enters adjacent ditch which flows to the Black River, Green River, and Puget Sound . . . ." The inspector concluded that contamination of ground water "may occur anywhere downstream."

84. As of November 19, 1980, Western Processing was required to attain interim status under 42 U.S.C. § 6900 et seq. ("RCRA") and to comply with interim status performance standards contained in 40 CFR Part 265. EPA adopted a policy that facilities which had failed to attain interim status would, nonetheless, be permitted to operate, if such facilities were in compliance with the interim status performance standards. However, EPA allowed Western Processing to continue to operate, even though Western Processing was never in compliance with interim status performance standards.

85. In approximately May of 1982, EPA received direct information from a Western Processing employee that:

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701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

a. Acid wastes received by Western Processing were sprayed directly onto a lime pile. Leachate and runoff from the lime pile were permitted to flow onto the ground, into unlined blind sumps and into the solvent distillation cooling pond.

b. Drums of waste materials stored on the Western Processing site were leaking contaminants onto the ground and into the ground water. Materials leaking from drums were allowed to mix with storm water and flow into sumps and into the distillation cooling pond.

c. Sludges from the solvent distillation unit, which were hazardous wastes that could only be disposed of in a RCRA-approved facility, were dumped on the south portion of the site. Runoff from these wastes was allowed to flow onto the ground and into sumps and leach into the ground water.

d. From time to time, Western Processing intentionally pumped contaminated leachate from the sumps and cooling pond directly into Mill Creek and into a Metro storm drain located on adjacent property.

86. Even after the United States had clear evidence that the operations of Western Processing were not in compliance with applicable environmental laws, the United States Army, Navy, Air Force and Coast Guard continued to ship hazardous wastes to Western Processing. These shipments were comprised primarily of acid wastes, which Western Processing Company allowed to flow from its

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SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

lime pile onto the ground and into its sumps and cooling pond. EPA approved of these shipments despite knowledge of Western Processing Company's practices with regard to such wastes.

87. When EPA and the Washington Department of Ecology finally took action at the Western Processing site, they undertook a preliminary cleanup and sampling in a reckless, willful, and negligent manner, causing significant contamination of the Western Processing site, ground water, surface waters and adjoining property. As a result, there were more and greater releases of hazardous substances from the Western Processing site and the cost of cleanup is significantly greater than the cost otherwise would have been. The increase in response costs caused by the actions of Plaintiffs exceeds the costs and damages which Third-Party Plaintiffs seek to recover from Unocal.

88. In February of 1983, the United States commenced this litigation. On April 9, 1983, EPA finally issued an order to Western Processing to cease operations.

89. In the course of this litigation, EPA took responsibility for gathering accurate information regarding the generators and transporters. EPA sent information requests for information under 42 U.S.C. § 9604 and 42 U.S.C. § 6927 to all potentially responsible parties ("PRPs") regarding the volume and nature of wastes sent to the site. EPA generally revised initial information when appropriate. The Boeing Company, the single largest generator,

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(206) 624-1040

volunteered to compile this information. EPA and Boeing both knew that the generators and transporters had agreed among themselves to allocate settlement costs on the basis of the EPA data.

90. The Phase I Consent Decree was entered on July 20, 1984. The signatories to the Phase I Consent Decree funded a surface cleanup at the Western Processing site. The amounts of contributions by the various signatories to the trust fund were based on the volume data EPA had gathered.

91. When negotiations on the Phase II Consent Decree reached a critical point, Assistant United States Attorney Jackson Fox, who had responsibility for the Western Processing matter, discovered the existence of documents which indicated that Boeing had underreported its volume for the years 1967 through 1969. This revelation led to the discovery that Boeing had also underreported its volume for the year 1970. In total, Boeing's documents established that Boeing had underreported its volume for the years 1967 through 1970 by more than seven million gallons.

92. Instead of adjusting the EPA data base to attribute greater volume to Boeing, the United States entered into a "sweetheart" deal within about 40 days with Boeing to assure a settlement that was unfair to all generators and transporters except Boeing. The United States aided the Boeing scheme to avoid paying its fair share of the cleanup by repeatedly threatening to sue all generators and transporters, including Unocal, who did not join in the settlement for unrecovered response costs.

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93. As a result of Boeing underreporting and EPA's acceptance of this underreporting, Unocal paid more than its proper share under the Phase I Consent Decree and would have had to pay more than its proper share under the Phase II Consent Decree.

COUNTERCLAIMS AGAINST THE UNITED STATES

I. THE UNITED STATES AS OPERATOR OF A FACILITY FROM WHICH A RELEASE HAS OCCURRED.

94. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 93 above.

95. The United States is a "person" under 42 U.S.C. § 9601(21).

96. The operation of the Western Processing site from 1951 through 1960 by the United States Army constituted a "facility" within the meaning of 42 U.S.C. § 9601(9).

97. While the Army operated the site, the "disposal" of hazardous substances within the meaning of 42 U.S.C. § 9601(29) occurred at the site. These substances include TCE.

98. The United States is jointly and severally liable for response costs and damages as a site operator under 42 U.S.C. § 9607(a).

99. The United States is a liable party for purposes of 42 U.S.C. § 9613(f).

100. All response costs or damages that Third-Party Plaintiffs seek to recover from Unocal are properly allocable to the United States under 42 U.S.C. § 9613(f) on the basis of equitable factors, including, but not limited to, the following:

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a. As a site operator, the United States was directly responsible for discharge of hazardous substances into the soil and water at the Western Processing site.

b. Even after the United States knew that Western Processing operations were not in compliance with environmental laws and were causing pollution, the United States continued to advise generators and transporters to send hazardous waste to the site.

c. Even after the United States knew that the Western Processing operations were not in compliance with environmental laws and were causing pollution, the United States, through the Army, Navy and Air Force, continued to ship large quantitities of hazardous waste to the site.

d. The United States, through EPA, negligently allowed Western Processing to continue operations until April 9, 1983, and thereby increased the level of contamination at the site.

e. The United States negligently conducted the preliminary sampling and cleanup at the site and thereby increased the level of contamination at the site.

f. The United States allowed the Boeing Company--which generated more of the waste shipped to Western Processing than all other generators combined--to settle its liability on the basis of volume figures that the United States knew were understated by more than seven million gallons.

g. But for the actions of the United States, Unocal would

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(206) 624-1040

have been a party to a Consent Decree covering the subsurface cleanup and would have avoided substantial litigation expenses.

101. If Unocal is held liable to pay response costs or damages relating to releases or threatened releases from the Western Processing site, the United States is liable to indemnify Unocal for part or all of such costs and damages pursuant to 42 U.S.C. § 9613(f).

II. UNITED STATES AS GENERATOR OF WASTES AT A FACILITY FROM WHICH A RELEASE HAS OCCURRED

102. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 101 above.

103. The United States, through the Army, Navy, Air Force or other agencies, arranged for the disposal of hazardous substances at the Western Processing site for purposes of 42 U.S.C. § 9607(a)(3). The United States owned these hazardous substances. Many of these substances were acid wastes. The United States also generated TCE.

104. The United States, through EPA, which caused other parties to ship or transport hazardous substances to Western Processing, arranged for the disposal of such hazardous substances at the Western Processing site within the meaning of 42 U.S.C. § 9607 (a)(3).

105. Western Processing is a "facility . . . containing such hazardous substances", with respect to the hazardous substances referenced in Paragraphs 103 and 104 above, for purposes of 42 U.S.C. § 9607(a)(3).

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106. Through the actions of the United States Army, Navy, Air Force or other agencies, the United States is jointly and severally liable, as a generator of wastes, pursuant to 42 U.S.C. §§ 9607(a) for response costs and damages with respect to the Western Processing site.

107. If Unocal is held liable to pay response costs, damages, contribution or any other recovery to Third-Party Plaintiffs, the United States is liable to indemnify Unocal for part or all of such payment as a generator of wastes shipped to the Western Processing site pursuant to 42 U.S.C. § 9613(f).

III. NEGLIGENCE

108. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 107 above.

109. The United States and the State of Washington negligently failed to perform their duties and responsibilities, delegated to plaintiffs by applicable federal and state law, with respect to the Western Processing site, including the monitoring and timely closure of the site, and thereby proximately caused part or all of the response costs and damages that Third-Party Plaintiffs seek to recover.

110. Despite knowledge that Western Processing was causing pollution to surface waters and was not operating in compliance with applicable federal and state statutes and regulations, the United States and the State of Washington repeatedly advised and directed generators and transporters of wastes, including hazardous

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substances and wastes, to take their wastes to the Western Processing site. The United States and the State of Washington intended for such generators and transporters to rely on this advice and such reliance was reasonable under all the circumstances. By advice and direction to generators and transporters to take waste to the Western Processing site, the United States and the State of Washington caused the release of hazardous substances in significantly greater amounts than would have occurred otherwise.

111. The United States and the State of Washington conducted preliminary sampling and cleanup at the Western Processing site in a grossly negligent manner and proximately caused the release of hazardous substances in significantly greater amounts than would have been released had the United States acted with due care. It was foreseeable that Unocal would rely on the United States and the State of Washington to properly discharge their duties, and, to its detriment, Unocal did rely on plaintiffs to properly discharge their duties. It was also foreseeable that the scope and nature of the damages and costs referred to in the Third Amended and Supplemental Complaint and Third Party Plaintiffs' Third Amended Third-Party Complaint and Cross-Claim would result from the failure of the United States and the State of Washington to properly perform their duties with respect to the regulation, monitoring and control of hazardous waste.

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112. The United States, through EPA, assumed responsibility for the accurate preparation of the record of volumes taken to the site by each potentially responsible party. Although plaintiffs discovered documents which indicated that the Boeing allocation was severely underreported, EPA failed to adjust the Boeing allocation. This conduct constitutes negligence and proximately caused Unocal to incur a disproportionate amount of response and cleanup costs for the Phase I cleanup, and to incur remedial design and on- and off-site testing program costs, and also caused Unocal not to join in the Phase II cleanup and Consent Decree.

113. On the basis of such negligence, the United States is liable to indemnify Unocal for all or part of any liability that may be imposed on Unocal to pay response costs, damages, contribution or other recovery to Third-Party Plaintiffs.

IV. MISREPRESENTATION

114. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 113 above.

115. The United States negligently or intentionally made representations to Unocal and others as to the amount of hazardous waste generated and transported by The Boeing Company to the Western Processing site, after the United States has discovered that those allocation numbers were inaccurate.

116. The United States knew that Unocal would rely on the stated allocation, which Unocal had a right to rely upon, and upon which Unocal did rely. The false representations by the United States

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required Unocal to choose between signing the Phase II Consent Degree based on these misrepresentations or to face continued litigation over Phase II costs which are contained in this contribution action. The false representations by the United States may have caused Unocal to pay cleanup costs and remedial design and on- and off-site testing program costs in an amount which actually exceeded Unocal's proportionate volumetric share.

COUNTERCLAIMS AGAINST THE STATE OF WASHINGTON

I. THE STATE OF WASHINGTON AS OPERATOR OF A FACILITY FROM WHICH A RELEASE HAS OCCURRED.

117. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 116 above.

118. The State of Washington is a "person" under 42 U.S.C. § 9601(21).

119. The operation of the Western Processing site from 1951 through 1960 by the Washington National Guard constituted a "facility" within the meaning of 42 U.S.C. § 9601(9).

120. While the National Guard operated the site, the "disposal" of hazardous substances within the meaning of 42 U.S.C. § 9601(29) occurred at the site. The substances include TCE.

121. The State of Washington is jointly and severally liable for response costs and damages at a site operator under 42 U.S.C. § 9607(a).

122. The State of Washington is a liable party for purposes of 42 U.S.C. § 9613(f).

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123. All response costs or damages that Third-Party Plaintiffs seek to recover from Unocal are properly allocable to the State of Washington under 42 U.S.C. § 9613(f) on the basis of equitable factors as follows:

a. As a site operator, the State of Washington was directly responsible for discharge of hazardous substances into the soil and water at the Western Processing site;

b. Even after the State of Washington knew that the Western Processing operations were not in compliance with environmental laws and were causing pollution, the State of Washington continued to advise generators and transporters to send hazardous waste to the site.

c. The State of Washington, through the Washington Department of Ecology and the Washington State Pollution Control Commission, negligently allowed Western Processing to continue operations until April 9, 1983, and thereby increase the level of contamination of the site;

d. The State of Washington negligently conducted the preliminary cleanup and sampling at the site and thereby increased the level of contamination of the site.

124. If Unocal is held liable to pay response costs relating to releases or threatened releases from the Western Processing site, the State of Washington is liable to indemnify Unocal for all or part of such costs and damages pursuant to 42 U.S.C. § 9613(f).

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II. NEGLIGENCE

125. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 124 above.

126. On the basis of the negligent acts described in Paragraphs 107 through 112, the State of Washington is liable to indemnify Unocal for all or part of any liability that may be imposed on Unocal to pay response costs, damages, contribution, or other recovery to Third-Party Plaintiffs.

COUNTERCLAIMS AGAINST THE BOEING COMPANY

By way of further answer and in support of its counterclaims against The Boeing Company, Unocal states as follows:

127. The Boeing Company began taking hazardous wastes to the Western Processing facility as early as 1963 or before. At Boeing's request, Western Processing expanded its facilities to accommodate Boeing's increasing volume of wastes.

128. Between 1963 (or before) and 1977, Boeing shipped substantially more than 31,000,000 gallons of wastes to Western Processing, comprising at least 63% and possibly as much as 80% of all wastes shipped to Western Processing.

129. The wastes shipped by Boeing to Western Processing include: chromic acid, sulfuric acid, nitric acid, hexavalent chromium, cadmium and nickel, trichloroethylene, phenol, cyanide, solvents, para-creosols, caustic soda, ketone, paint stripper, sodium hydroxide, chrome and various contaminated sludges.

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130. Between 1963 (or before) and 1977, Boeing personnel visited the Western Processing site very frequently. Boeing personnel made at least 756 trips to the site in 1969 alone.

131. By 1966, Boeing was well aware that Western Processing was a poor facility, and was causing pollution of soil and water. A 1966 Boeing internal report indicates that the potential consequences of continued use of Western Processing as a disposal facility included fumes, bad publicity, and even shutdown of Boeing's plant. However, Boeing continued to ship large quantities of hazardous waste to the site.

132. In 1970, Bovay Engineers prepared a report on the Western Processing site at Boeing's request. In this report, Bovay Engineers recommended that Boeing not continue to take wastes to Western Processing due to the environmentally unsound practices of the site operator.

133. In 1971, a Boeing internal task force reported on the Western Processing facility as follows:

a. The "majority of toxic materials from Boeing to Western Processing are not treated, but merely dumped on the property."

b. The equipment and personnel at Western Processing were "marginal".

c. Western Processing was leaking chemicals into the ground water.

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134. Despite the poor assessment of Western Processing the task force recommended that Boeing "intercede with DOE to enable Western Processing to make only minimal improvements." The task force stated that DOE already believed that Western Processing was violating pollution control laws.

135. Despite clear knowledge of violation of environmental laws at Western Processing, Boeing continued to ship large quantities of hazardous waste to the Western Processing site in the 1970's.

136. Although Western Processing purported to be in the chemical reclaiming and recycling business, Boeing knowingly sent wastes to Western Processing that were not reclaimable or recyclable. Boeing knew the Western Processing could not afford to refuse such wastes from Boeing because Boeing was by far the largest source of business for Western Processing.

137. Boeing dictated the terms of its business with Western Processing and effectively controlled the manner in which Western Processing disposed of Boeing wastes, including maintaining a marginal operation not intended to preserve and protect the environment.

138. After EPA closed the Western Processing facility, EPA requested information from all PRPs, pursuant to 42 U.S.C. § 9604 and 42 U.S.C. § 6927, regarding each PRP's type and volume of waste shipped to the Western Processing site. EPA expressly notified the PRPs that concealment or falsification of such information was unlawful. Despite this warning, Boeing's response to the EPA

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request falsely underreported the volume of waste Boeing had shipped to the Western Processing site.

139. After EPA closed the Western Processing facility and informed the PRPs of its intention to require a cleanup, many of the PRPs formed a Coordinating Committee to oversee efforts to negotiate a satisfactory settlement with the government. Boeing offered to take responsibility for compiling the volume information all PRPs had supplied to EPA. At the time, members of the Coordinating Committee agreed that the volume information, as collected by EPA and compiled by Boeing, would probably be the primary basis for allocating shares of the Western Processing cleanup. By accepting the resonsibilty for the volume information, Boeing undertook to act in a fiduciary capacity for the other members of the Coordinating Committee, and, at a minimum, had a duty not to knowingly misstate volume information. In addition, Boeing provided an affidavit to the government that stated:

> Declarant (Boeing) agrees that documents and records in its custody or control which refer or relate to transactions between declarant and Western Processing Company, Inc., or the Nieuwenhuises, will be made available to EPA for inspection and copying . . . .

140. In response to EPA's request for information, Boeing had understated its volume share by more than 7 million gallons. The documents Boeing initially furnished were incomplete for all years. Boeing's failure to provide EPA or other PRPs with copies of documents in Boeing's possession that evidenced much higher

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

shipments of wastes to Western Processing than the documents originally furnished by Boeing violated 42 U.S.C. § 9603. In addition, this conduct violated Boeing's agreement with EPA and its fiduciary duty to other PRPs.

141. If the Phase II Consent Decree had reflected Boeing's true volume relative to the volume of other PRPs, Boeing would have been required to contribute at least an additional $7,000,000 to the Phase II cleanup, with a proportionate reduction in all other PRPs' contributions. In addition, Boeing would have been required to reimburse Phase I participants by at least $1,000,000.

142. In order to avoid paying its fair share of the Phase II cleanup, Boeing sought to reach a settlement with the government as quickly as possible after the truth about Boeing's volume had emerged. Boeing endeavored to exclude other PRPs from settlement negotiations. Within about 40 days of the revelations about Boeing's true volume, Boeing reached settlement with the government.

143. Boeing sought to impose a settlement on all other PRPs through misrepresentation. On May 16, 1986, Boeing sent a letter to all other PRPs, enclosing a draft Phase II Consent Decree, Scope of Work, Trust Agreement, Mutual Covenant Not To Sue and other documents to be executed by PRPs who elected to join in the settlement. The Trust Agreement gave Boeing sole authority to direct the Phase II clean-up; and the Mutual Covenant Not To Sue insulated Boeing from liability for any of its inaccurate reporting of volumes. The May 16 letter recommended that all PRPs join in the

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(206) 624-1040

settlement. However, the May 16 letter was not on Boeing stationary. Rather, the letter was on Coordinating Committee stationary and was signed by a Boeing representative as Chairman of the Coordinating Committee. Boeing intended to mislead the PRPs into believing the settlement documents forwarded with the letter had been reviewed and approved by the Coordinating Committee. In fact, the Coordinating Committee had not even met to consider the settlement documents and had not approved them. The May 16 letter also misrepresented that the government and Special Master required execution of all settlement documents. In fact, the government required only that the Consent Decree be signed.

144. As part of the settlement package forwarded with the May 16 letter, Boeing sought to obtain reimbursement in the amount of $1,457,000 for its consultants, despite the fact that Boeing had refused to allow any PRPs to have access to or obtain assistance from those consultants. Boeing also sought to require a contribution from all transporters except itself, even though Boeing transported more than 60 percent of its own wastes.

145. On information and belief, these misrepresentations resulted in a savings to Boeing of at least $8.5 million.

I. BOEING AS OPERATOR OF A FACILITY FROM WHICH A RELEASE HAS OCCURRED.

146. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 145 above.

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147. From 1963 through 1977, Boeing operated the Western Processing site within the meaning of 42 U.S.C. § 9607(a), insofar as Boeing, as the dominant customer, had effective control over the operations of the Western Processing Company.

148. While Boeing was the operator of the site, the "disposal" of hazardous substances within the meaning of 42 U.S.C. § 9601(29) occurred at the site.

149. Boeing is jointly and severally liable for response costs and damages as a site operator under 42 U.S.C. § 9607(a). Boeing is a liable party for purposes of 42 U.S.C. § 9613(f).

150. All response costs and damages incurred by Unocal, all response costs and damages Third-Party Plaintiffs seek to recover from Unocal, and all response costs and damages Boeing seeks to recover from Unocal are properly allocable to Boeing under 42 U.S.C. § 9613(f) on the basis of equitable factors, including, but not limited to, the following:

a. In 1970, if not before, Boeing knew that Western Processing did not dispose of Boeing's wastes in a lawful and environmentally sound manner.

b. Boeing's wastes comprised 63% and possibly as much as 80% of all wastes shipped to Western Processing.

c. As the dominant customer of Western Processing's waste disposal services, Boeing effectively controlled the operations at the Western Processing site and, for purposes of CERCLA, was an operator of Western Processing.

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(206) 624-1040

d. Boeing's wastes were among the most hazardous wastes shipped to Western Processing.

e. Boeing knowingly shipped wastes to Western Processing that are not reclaimable.

f. Boeing refused to pay Western Processing enough for disposal of wastes to enable Western Processing to improve its operation.

g. In the course of this litigation, Boeing intentionally or negligently misrepresented the volume of wastes Boeing had shipped to Western Processing.

h. By misrepresenting the volume of its wastes, Boeing breached its fiduciary duty to other defendants as the head of the Coordinating Committee.

i. Under the Phase II Consent Decree, Boeing has paid less than its fair share of liability on the basis of volume and composition of waste.

j. But for the actions of Boeing, Unocal would have been a party to the Phase II Consent Decree and would have avoided substantial litigation expenses.

II. BOEING AS GENERATOR OF WASTES AT A FACILITY FROM WHICH A RELEASE HAS OCCURRED.

151. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 150 above.

152. Boeing is a person who arranged for disposal of its hazardous substances at the Western Processing site for purposes of 42 U.S.C. § 9607(a)(3). The Western Processing site is a "facility

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(206) 624-1040

. . . containing such hazardous substances" for purposes of 42 U.S.C. § 9607(a)(3).

153. Boeing is jointly and severally liable, as a generator of wastes pursuant to 42 U.S.C. § 9607(a), for response costs and damages with respect to the Western Processing site.

154. All response costs and damages incurred by Unocal, all response costs and damages Third-Party Plaintiffs seek to recover from Unocal, and all response costs and damages Boeing seeks to recover from Unocal are properly allocable to Boeing under 42 U.S.C. § 9613(f) on the basis of equitable factors as set forth in Paragraph 150.

III. BOEING AS TRANSPORTER OF WASTES TO A FACILITY FROM WHICH A RELEASE HAS OCCURRED.

155. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 154 above.

156. Boeing accepted hazardous substances for transport to the Western Processing site for disposal within the meaning of 42 U.S.C. § 9607(a)(4). Boeing selected the Western Processing site within the meaning of 42 U.S.C. § 9607(a)(4).

157. Boeing is jointly and severally liable, as a transporter of wastes pursuant to 42 U.S.C. § 9607(a), for response costs and damages with respect to the Western Processing site.

158. All response costs and damages incurred by Unocal, all response costs and damages Third-Party Plaintiffs seek to recover from Unocal, and all response costs and damages Boeing seeks to recover from Unocal are properly allocable to Boeing under 42 U.S.C.

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701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

§ 9613(f) on the basis of equitable factors as set forth in Paragraph 150.

IV. BREACH OF FIDUCIARY DUTIES

159. Unocal realleges and incorporates herein the allegations in Paragraphs 1 through 158 above.

160. As head of the Coordinating Committee, which position Boeing volunteered and agreed to undertake, Boeing assumed a fiduciary relationship to all PRPs, including Unocal.

161. As such, Boeing was bound to act in good faith and with due regard for the interest of other PRPs, including Unocal, who placed their trust, faith and confidence in Boeing, and relied on Boeing to act fairly and honestly.

162. Boeing breached that duty to the PRPs and to Unocal by: (1) knowingly misrepresenting the volume of its wastes taken to the Western Processing site; (2) excluding other PRPs, including Unocal, from negotiations with the government; (3) not assuming a share of transporter costs for materials which it transported to the Western Processing site; and (4) representing, in its capacity as head of the Coordinating Committee, that the government required execution of the Trust Agreement and a covenant not to sue Boeing for the Phase II cleanup.

163. In committing these actions, Boeing took advantage of Unocal's trust and Boeing's fiduciary relationship for the benefit of itself and to the prejudice of others, including Unocal.

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
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(206) 624-1040

164. Boeing is required to repay Unocal for damages which were proximately caused by Boeing's breach of its fiduciary duty which include: repayment of Unocal's cleanup costs in the amount of $490,752; repayment of Unocal's remedial design and on- and off-site testing program costs in the amount of $101,070; and for any future cost and damages or liability incurred by Unocal as a result of its not signing the Phase II Consent Decree, including but not limited to, all attorney fees and legal costs expended in defense of action by the United States and the State of Washington and in defense of any third-party complaint, including, but not limited to, the Third Amended Third-Party Complaint and Cross-Claim of American Tar, et al., and the Second Amended Third-Party Complaint and Cross-Claim of Boeing.

V. MISREPRESENTATION

165. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 164 above.

166. Boeing represented to Unocal that the volume of wastes allocated to Boeing in its data base and the Boeing volume percentage showing on the Boeing print-out correctly and truthfully stated Boeing's Western Processing volume.

167. Boeing's representations were material to Unocal's decision to participate in negotiating a cleanup of Western Processing and to pay Unocal's share of the Phase I cleanup costs and the remedial design and on- and off-site testing program costs.

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168. During the period of negotiations between the government and the PRPs regarding the cleanup of the Western Processing site, and until at least April, 1986, Boeing had the exclusive knowledge that it had underreported the volume of its wastes it had actually sent to the Western Processing site by more than seven million gallons.

169. Boeing intended that Unocal act upon its false representations, and Unocal did rely on the truth of the representations made by Boeing and would not have participated in the Phase I cleanup and remedial design and on- and off-site testing program, but for the misrepresentation of the facts by Boeing.

170. As a direct and proximate result of Boeing's misrepresentations, Union incurred costs in the amount of $591,822, which amounts Unocal is entitled to recover from Boeing.

VI. NEGLIGENCE

171. Unocal realleges incorporates herein the allegations contained in Paragraphs 1 through 170 above.

172. At the time of Boeing's acts and omissions with regard to the Western Processing site, as described more fully in Paragraphs 1 through 170 above, Unocal was, and at all material times continues to be, a member of the class of persons and entities who foreseeably might ship waste to, use or otherwise come into contact with, the Western Processing facility. Unocal was and continues to be a member of the class of persons and entities who foreseeably might be

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2400 COLUMBIA CENTER
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injured by Boeing's acts and omissions.

173. Any use of the Western Processing facility by Unocal was nonnegligent and conformed fully with all applicable local, state and federal statutes, rules and regulations governing disposal of industrial waste of the sort generated by Unocal.

174. As a direct and proximate result of Boeing's acts and omissions, Unocal incurred Phase I cleanup costs and remedial design and off-site testing costs in the amount of $591,822, which amounts Unocal is entitled to recover from Boeing, as well as all costs, including, but not limited to, response costs, damages, attorney fees, and legal costs, resulting from Unocal's defense of plaintiffs' and third-party plaintiffs, including, but not limited to the Third Amended Third-Party Complaint and Cross-Claim of American Tar, et al., and the Second Amended Third-Party Complaint and Cross-Claim of Boeing.

CROSS-CLAIMS AGAINST WESTERN PROCESSING COMPANY, INC. AND GARMT J. NIEUWENHUIS.

In support of its cross-claims against Western Processing Company, Inc., and against Garmt J. Nieuwenhuis, Unocal states as follows:

175. Western Processing Company, Inc. ("Western Processing") is/was a domestic chemical reclaiming and recycling business incorporated in the state of Washington. Western Processing owned and operated the facility for the treatment and storage of hazardous wastes and hazardous substances at a site at or near 7215 - South

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

196th Street in Kent, Washington.

176. Garmt J. Nieuwenhuis is, and at all relevant times was, the operator of the Western Processing facility.

177. On information and belief, defendant Garmt J. Nieuwenhuis, at all times relevant to these claims, actively, regularly and personally participated in, and controlled, the activities conducted at the Western Processing site.

178. From approximately 1957 through March, 1983, Western Processing and Garmt J. Nieuwenhuis began receiving and storing shipments of hazardous substances or wastes from various generators and transporters of such substances.

I. OWNERS AND OPERATORS OF A FACILITY FROM WHICH A RELEASE OCCURRED.

179. Unocal realleges and incorporates herein the allegations contained in Paragraphs 1 through 178 above.

180. Western Processing and Garmt J. Nieuwenhuis are the owners and operators and/or were the owners and operators of a facility within the meaning of 42 U.S.C. § 9607(a).

181. Western Processing and Garmt Nieuwenhuis are jointly and severally liable for all necessary response costs incurred by Unocal and any other person, including Third-Party Plaintiffs, and for all damages resulting from any release of hazardous waste at the Western Processing site pursuant to 42 U.S.C. § 9607(a).

182. If Unocal is held liable to pay response costs or damages relating to release or threatened release from the Western

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701 FIFTH AVENUE
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Processing site, Western Processing and Garmt Nieuwenhuis are liable to indemnify Unocal for part or all of such costs and damages pursuant to 42 U.S.C. § 9613(f).

II. NEGLIGENCE

183. Unocal realleges and incorporates the allegations contained in Paragraphs 1 through 182 above.

184. Unocal was, and at all material times, continues to be, a member of the class of persons and entities who foreseeably might ship waste to, use or otherwise come into contact with, the Western Processing facility, and a person to whom Western Processing and Garmt J. Nieuwenhuis owed a duty of care. Unocal was and continues to be a member of the class of persons and entities who foreseeably might be injured by Western Processing and Garmt J. Nieuwenhuis's acts and omissions.

185. Any use of the Western Processing facility by Unocal was nonnegligent and conformed fully with all applicable local, state and federal statutes, rules and regulations governing disposal of industrial waste of the sort generated by Unocal.

186. As a direct and proximate result of Western Processing and Garmt J. Nieuwenhuis's acts and omissions and breach of its duty to use due care, Unocal incurred Phase I cleanup costs and remedial design and off-site testing costs in the amount of $591,822, which amounts Unocal is entitled to recover from Western Processing and Garmt J. Nieuwenhuis.

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

COUNTERCLAIMS AGAINST
THIRD-PARTY PLAINTIFFS

187. By way of further answer and in support of its counterclaims against Third-Party Plaintiffs American Tar Company, Atlantic Richfield Company, Bethlehem Steel Corporation, Chevron U.S.A., Inc., Flecto Coatings, Ltd., John Fluke Mfg. Co., Inc., Pacific Propeller, Inc., Morton Thiokol, Inc., Safety Kleen, Inc., Seattle Times, Inc., The Pittsburgh & Midway Coal Mining Company, and Western Pneumatic Tube Company, Unocal realleges and incorporates the allegations contained in Paragraphs 1 through 186 above and states as follows:

188. Third-Party Plaintiff American Tar Company is a corporation which is incorporated in the state of Washington and with its principal place of business located in the state of Washington. Third-Party Plaintiff Atlantic Richfield Company is a corporation which is incorporated in the state of Delaware with a principal place of business in the state of California. Third-Party Plaintiff Bethlehem Steel Corporation is a corporation which is incorporated in the state of Delaware with its principal place of business in the Commonwealth of Pennsylvania. Third-Party Plaintiff Chevron U.S.A., Inc. is a corporation which is incorporated in the Commonwealth of Pennsylvania with its principal place of business in the state of California. Third-Party Plaintiff Flecto Coatings, Ltd. is a corporation which is incorporated in the province of British Columbia with its principal place of business located in British

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2400 COLUMBIA CENTER
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Columbia. Third-Party Plaintiff John Fluke Mfg. Co., Inc. is a corporation which is incorporated in the state of Washington and with its principal place of business located in the state of Washington. Third-Party Plaintiff Pacific Propeller, Inc. is a corporation which is incorporated in the state of Washington and with its principal place of business located in the state of Washington. Third-Party Plaintiff Morton Thiokol, Inc. is a corporation which is incorporated in the state of Delaware and with its principal place of business in the state of Illinois. Third-Party Plaintiff Safety Kleen, Inc. is a corporation which is incorporated in the state of Illinois and with its principal place of business in the state of Illinois. Third-Party Plaintiff Seattle Times, Inc. is a corporation which is incorporated in the state of Delaware and with its principal place of business in the state of Washington. Third-Party Plaintiff The Pittsburgh & Midway Coal Mining Company is a corporation which is incorporated in the state of Missouri and with its principal place of business in the state of California. Third-Party Plaintiff Western Pneumatic Tube Company is a corporation which is incorporated in the state of Washington and with its principal place of business in the state of Washington.

189. This Court has personal jurisdiction over the parties identified in Paragraphs 188 pursuant to RCW 4.28.185 and other applicable authority.

190. On information and belief, Cross-Claim Defendant Unocal states that Third-Party Plaintiffs by contract, agreement, or

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(206) 624-1040

otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal of treatment of hazardous substances owned or possessed by them at the Western Processing site, as those terms are used in CERCLA, or in the Third Amended and Supplemental Complaint, or were persons who accepted and transported hazardous substances for disposal or treatment at the Western Processing site, as those terms are used in CERCLA or the Third Amended and Supplemental Complaint; or both of the above.

191. Third-Party Plaintiffs are jointly and severally liable, as generators and/or transporters of wastes pursuant to 42 U.S.C. § 9607(a), for response costs and damages with respect to the Western Processing site.

192. Should Cross-Claim Defendant Unocal be held liable to any party, including Third-Party Plaintiffs, for damages, response costs or other monetary relief, in connection with any release or threatened release of hazardous substances from the Western Processing site, Unocal is entitled to indemnification and/or contribution from Third-Party Plaintiffs under 42 U.S.C. § 9613(f) on the basis of equitable factors including, but not limited to: the divisibility of any harm attributable to Unocal should any such harm be found to exist; the relative amounts of Unocal's and Third-Party Plaintiffs' wastes; the relative degree of toxicity of Unocal's and Third-Party Plaintiffs' wastes; and the relative degrees of care exercised by Unocal and Third-Party Plaintiffs with respect to the waste concerned, taking into account the characteristics of such wastes.

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

ADDITIONAL COUNTERCLAIMS AND CROSS-CLAIMS AGAINST ALL OTHER NAMED THIRD-PARTY PLAINTIFFS AND THIRD-PARTY DEFENDANTS EXCLUDING GATX TANK STORAGE TERMINALS CORPORATION AND NORTHWEST TANK SERVICE (NORTHWEST ENVIROSERVICES, INC.)

193. By way of counterclaim against all other named third-party plaintiffs, and by way of cross-claims against all other named third-party defendants, with the exceptions of GATX Tank Storage Terminals Corporation and Northwest Tank Service (Northwest EnviroServices, Inc.), Unocal realleges and reincorporates the allegations contained in Paragraphs 1 through 192, and states:

194. That the damages, if any, recoverable by Third-Party Plaintiffs in this action were caused by the actions of Boeing and/or one or more of the other named third-party plaintiffs or defendants in generating the waste, in directing that said waste be transported to and disposed of at the Western Processing facility, and/or in transporting and disposing of said waste at the Western Processing facility.

195. Should the Court find that Third-Party Plaintiffs are entitled to relief against Unocal, Unocal is entitled to indemnity and/or contribution against all other third-party plaintiffs and defendants, excluding GATX Tank Storage Terminals Corporation and Northwest Tank Service (Northwest EnviroServices, Inc.) for all damages permitted by federal and Washington State law, costs, and reasonable attorney fees incurred by Unocal in defending this action.

WHEREFORE, UNOCAL prays for relief against Plaintiffs the United States and the State of Washington as follows:

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2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

1. A declaration that, if Unocal is held liable to Third-Party Plaintiffs for response costs, damages, contribution or other recovery, then Unocal is entitled to full indemnity from Plaintiffs the United States and the State of Washington.

2. Unocal's costs and attorney fees incurred herein;

3. And such further legal and equitable relief as this Court deems just and appropriate.

WHEREFORE, UNOCAL prays for relief against The Boeing Company as follows:

1. That the Second Amended Third Party Complaint be dismissed, with prejudice.

2. For recovery of Unocal's cleanup costs and remedial design and on- and off-site testing programs costs or, in the alternative, for that percentage of such costs which represents the percentage of Unocal's costs and remedial and on- and off-site testing program costs adjudged to be the responsibility of Boeing through its acts and omissions, or as a result of the amount of waste actually generated or transported by Boeing to the Western Processing site or other equitable factors;

3. For a declaration that, if Unocal is held liable for any response costs, damages, or other monetary relief in connection with any release of hazardous substances from the Western Processing site, Unocal is entitled to full indemnity or contribution from Boeing from and against such liability;

4. For Unocal's costs and attorneys fees incurred herein; and

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

5. For such further legal and equitable relief as this Court deems just and equitable.

WHEREFORE, UNOCAL prays for relief against Western Processing and Garmt J. Nieuwenhuis, jointly and severally, as follows:

1. For recovery of Unocal's cleanup costs and remedial design and on- and off-site testing programs costs or, in the alternative, for that percentage of such costs which represents the percentage of Unocal's costs and remedial and on- and off-site testing program costs adjudged to be the responsibility of Western Processing and Garmt J. Nieuwenhuis through their acts and omissions pursuant to 42 U.S.C. § 9613(f);

2. For declaration that, if Unocal is held liable to any party for any damages, response costs, or other monetary relief, in connection with any release of hazardous substances from the Western Processing site, Unocal is entitled to full indemnity or contribution from Western Processing and Garmt J. Nieuwenhuis from and against such liability;

3. For Unocal's costs and attorney fees incurred herein; and

4. For such further legal and equitable relief as this Court deems just and equitable.

WHEREFORE, UNOCAL prays for relief against Third-Party Plaintiffs as follows:

1. That the Third Amended Third-Party Complaint be dismissed with prejudice;

LESOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

2. For recovery of Unocal's cleanup costs and remedial design and on- and off-site testing programs costs or, in the alternative, for that percentage of such costs which represents the percentage of Unocal's costs and remedial and on- and off-site testing programs costs adjudged to be the responsibility of Third-Party Plaintiffs pursuant to 42 U.S.C. § 9613(f);

3. For a declaration that, if Unocal is held liable for any response costs, damages or other monetary relief, in connection with any release or threatened release of hazardous substances from the Western Processing site, Unocal is entitled to full indemnification or contribution from Third-Party Plaintiffs from and against such liability;

4. For Unocal's costs and attorney fees incurred herein; and

5. For such further legal and equitable relief as this Court deems just and equitable.

WHEREFORE, UNOCAL prays for relief against all other named third-party plaintiffs and third-party defendants, excluding GATX Tank Storage Terminals Corporation and Northwest Tank Service (Northwest EnviroServices, Inc.), jointly and severally, as follows:

1. For recovery of Unocal's cleanup costs and remedial design and on- and off-site testing program costs or, in the alternative, for that percentage of such costs which represents the percentage of Unocal's costs and remedial and on- and off-site testing program costs adjudged to be the responsibility of said parties through their acts and omissions pursuant to 42 U.S.C. § 9613(f);

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ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040

2. For declaration that, if Unocal is held liable to any party for any damages, response costs, or other monetary relief, in connection with any release of hazardous substances from the Western Processing site, Unocal is entitled to full indemnity or contribution from said parties from and against such liability;

3. For Unocal's costs and attorney fees incurred herein; and

4. For such further legal and equitable relief as this Court deems just and equitable.

RESERVATION OF RIGHTS

Unocal reserves the right to allege additional affirmative defenses and to assert counterclaims, cross-claims and third-party claims against any party to this litigation or any other person, as may be or may become appropriate under existing and future statutes, regulations or common law.

DATED: August 21, 1989.

LeSOURD & PATTEN, P.S.
Attorneys for Union Oil Company of California

Lawrence E. Hard

Victoria J. Bjorkman

LeSOURD & PATTEN, P.S.
ATTORNEYS AT LAW
2400 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7005
(206) 624-1040